

MAY 25 1978

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1505

ESSEX COUNTY WELFARE BOARD,

*Petitioner,**v.*DEPARTMENT OF INSTITUTIONS AND
AGENCIES, *et al.*,*Respondents.*

**On Petition for a Writ of Certiorari to the
Supreme Court of New Jersey**

**BRIEF IN OPPOSITION FOR RESPONDENT
DEPARTMENT OF INSTITUTIONS AND AGENCIES**

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Question Presented

Is the Supreme Court of New Jersey's decision that a county welfare board lacks standing to seek state court judicial review of administrative decisions issued by its master state agency based upon adequate and independent state grounds?

Counter-Statement of the Case

A. Background

New Jersey participates in the program of cooperative federalism known as Aid to Families with Dependent Children ("AFDC"), 42 U.S.C. § 601 *et seq.*; N.J.S.A. 44:10-1 *et seq.*, the purpose of which is to provide financial assistance to needy children. In order to qualify for the receipt of federal AFDC funds, participating states must comply with all of the many requirements set out in the Social Security Act, including 42 U.S.C. § 602(a)(3) which provides:

"A state plan for aid and services to needy families with children must . . . either provide for the establishment or designation of a single state agency to administer the plan, or provide for the establishment or designation of a single state agency to supervise the administration of the plan. . . ."

The New Jersey Legislature designated the Department of Human Services,* Division of Public Welfare (hereinafter referred to as the "Department") as the "single state agency" to supervise the administration of AFDC, and granted it broad rulemaking authority to carry out this mandate. N.J.S.A. 44:10-3; 44:7-6; 30:4B-1 *et seq.* AFDC grants are directly provided to claimants by the county welfare board of the county in which a claimant resides. N.J.S.A. 44:10-2. County welfare boards were created for this purpose by the Legislature, which authorized the governing body of each county, the Board of Chosen Freeholders, to select the county welfare board's members. N.J.S.A. 44:7-7.

* Formerly known as the Department of Institutions and Agencies. See N.J.S.A. 30:1A-1.

The Department of Human Services is responsible for developing and supervising the implementation of all AFDC policy in New Jersey. N.J.S.A. 44:10-3; see N.J.A.C. 10:81-1.1 *et seq.* The county welfare boards are required to administer the program in strict compliance with state statutes and the Department's regulations. N.J.S.A. 44:7-8; N.J.A.C. 10:81-1.1(d). In its administration of AFDC, the county welfare board functions as a "bureau" of the Department. N.J.S.A. 44:10-2; 44:7-12.

Record keeping systems, public assistance applications and other forms used by the county welfare boards, and all standards for their processing of such applications are prescribed under state law by the Department. N.J.S.A. 44:7-6. The Department is responsible to assure that AFDC is uniformly implemented in each county of the state. N.J.S.A. 44:10-3(a). Moreover, it determines all standards for county welfare board employees, including the establishment of positions, their classifications according to designated duties and responsibilities, and the procedures for selection, certification, appointment, and tenure. N.J.S.A. 44:7-6. The compensation of all county welfare board employees, including its director, is regulated directly by the Department. See *Essex County Welfare Board v. Klein*, 149 N. J. Super. 241, 373 A. 2d 691 (App. Div. 1977).

In New Jersey, AFDC grants are financed 50% by the federal government, 37½% by the state, and 12½% by the individual counties. N.J.S.A. 44:10-5; 44:7-24. Administrative costs, including the salaries of county welfare board personnel, are financed 63% by federal/state funds and 37% by county funds. N.J.S.A. 44:10-5.

The county welfare boards receive, investigate and act upon all AFDC applications in the first instance under

standards developed by the Department. N.J.S.A. 44:7-18. Each decision granting or denying assistance must be reported to the Department. *Id.* State law provides that a county welfare board's decision is subject to review in an administrative "fair hearing" whenever it appears that AFDC has been improperly denied, where a monthly grant has been approved in an inadequate amount, or where the board has taken no action within 30 days of the filing of an application. *Id.* Such review may be initiated at the request of the claimant, or *sua sponte* by the Department. *Id.* State law also provides that if after such a fair hearing "the appeal is sustained by the State division [of Public Welfare of the Department of Human Services], the payments of assistance in the amount determined by the State division must be paid by said county welfare board as herein provided." *Id.*

B. Proceedings below

This matter involves six cases in which individual claimants exercised their right to a fair hearing before the New Jersey Department of Human Services, Division of Public Welfare, challenging a county welfare board's determination denying or reducing AFDC benefits. In each case, the Department reversed the county welfare board's initial decision and found that the individual claimant was entitled to AFDC benefits.

The county welfare board filed notices of appeal in the Superior Court of New Jersey, Appellate Division. In two of the cases, petitioner Essex County Welfare Board applied to the court for stays of the Department's decisions. In both instances, stays were granted, thus denying benefits to individual claimants during the pendency of the appellate process notwithstanding final State administra-

tive decisions upholding their eligibility. App. B to Petition, p. 13a-14a.

The Department of Human Services, as well as two of the AFDC claimants, moved to dismiss the appeals on the basis that county welfare boards lack standing to appeal State fair hearing decisions. The Appellate Division rejected this contention, holding that the contribution by the counties of 12½ percent of AFDC grants entitled the county welfare boards to appeal as the representative of county taxpayers under New Jersey law governing standing. The court based its decision on

"the expressed concern that if the county welfare boards are not entitled to judicial review, the taxpayers of the counties involved would be without representation with respect to a final agency determination directly affecting their financial interests." App. B to Petition, p. 18a.

Moreover, the Appellate Division ruled that nothing in the Social Security Act or its implementing regulations, particularly 42 U.S.C. §602 (a) (3), required a contrary result. App. B to Petition, p. 19a.

On appeal, the Supreme Court of New Jersey reversed and ordered the appeals dismissed. The court noted that the Department is the state agency designated by the Legislature to administer AFDC in New Jersey. After referring to N.J.S.A. 44:10-2 and 44:10-3, the court stated:

"County welfare boards, by statutory provision, actually administer the program at the local level subject to the supervision of the Department [of Human Services] which has adopted general policies, rules and regulations for carrying out the purposes of the program. See N.J.A.C. 10:81-1.1 *et seq.*; *Redding*

v. *Burlington Cty. Welf. Bd.*, 65 N. J. 439, 442 (1974)." App. A to Petition, p. 5a.

The court acknowledged that under the *New Jersey Constitution* (1947), Art. VI, §V, Para. 4 and *N. J. Ct. R.* 2:2-3(a)(2), it was "not open to question" that fair hearing decisions are subject to judicial review. But "standing to obtain judicial review," said the court, "is something else." App. A to Petition, p. 5a. Aggrieved welfare clients are clearly entitled to judicial review. In addition, the court, answering the Appellate Division's expressed concern that some governmental body should have standing to assert the interests of taxpayers in a representative capacity, found that "the governing body of the particular county" would have standing to appeal "since it provides a substantial part of the AFDC grant money." App. A to Petition, p. 5a. The court determined that because of its unique statutory role, however, the county welfare boards were unable to serve as taxpayer representatives for standing purposes:

"The county welfare board though, in administering the AFDC program, is a subordinate branch of the single State agency and has no standing as such to have judicial review of fair hearing decisions by its superior agency. In its capacity as local administrator, it exercises a statutory function in the overall program. It has no other interest to assert." App. A to Petition, p. 6a.

In further support of its conclusion, the court found that:

"the nature of the AFDC program militates against permitting the local agency to have judicial review of fair hearing decisions favorable to a welfare client." *Id.*

The people directly affected by such proceedings are "needy and poor," and "live from day-to-day dependent on AFDC grants." *Id.* Expressing obvious concern that AFDC grants not be subject to further delay due to stays pending appeal, the court determined as a matter of state judicial policy that state courts should not be used to exacerbate the plight of the needy.

"To involve the judiciary in the routine review of these grants and the underlying factual determinations would cause delay and uncertainty, preventing those who need help the most from realizing the benefits the program is intended to provide." *Id.*

In summary, the court concluded that "the legislative intent as expressed in the Federal and State enactments" precluded county welfare board appeals of fair hearing decisions. App. A to Petition, p. 7a. It was unnecessary for a county welfare board to possess standing to appeal because the public interest in fair decisions and proper administration of AFDC is adequately protected by the "safeguards and checks built into the joint federal-state operation" of the program, and because county governing bodies may exercise the right of appeal. *Id.*

ARGUMENT

The court lacks jurisdiction over this matter since the decision of the Supreme Court of New Jersey rests upon an adequate and independent basis of state law.

In considering whether or not to review the judgment of the highest court of a state, it is elementary that:

"Where the judgment of a State court rests upon two grounds, one of which is federal and the other

non-federal in character, [the Supreme Court's] jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935); *Cramp v. Board of Public Instruction*, 368 U. S. 278, 281 (1961).

Where it appears from the state court decision that state law was relied upon and reasonably supports the judgment, it is incumbent upon the petitioner to demonstrate the inadequacy of the state grounds. *Durley v. Mayo*, 351 U. S. 277, 281 (1956). If it appears merely that the state court judgment *might* have been based on adequate state grounds, petitioner will be deemed to have failed to meet its burden. *Stembridge v. Georgia*, 343 U. S. 541, 547 (1952).

In the instant matter, careful examination of "the organization and language of the [Supreme Court of New Jersey's] opinion indicates that, at the least, state law is an equal ground of decision." *Jankovich v. Indiana Toll Road Commission*, 379 U. S. 487, 491 (1965). It would be inappropriate for the Court to grant a writ of certiorari and exercise jurisdiction over this case since it involves an issue under state law of a state-created board's right of access to state appellate courts.*

* Petitioner has vastly overstated the importance and impact of this case in a desperate effort to convince the Court to grant certiorari. Petition at 9-12.

Although it is true that eighteen states operate AFDC programs in which the state agency supervises local agencies, petitioner has failed to demonstrate how a decision of the Supreme Court of New Jersey "directly affects" AFDC administration in those states. Apparently, the decision below had no effect on the New York court in *Clement v. Fahey*, — App. Div. 2d — (App. Div. NY 1978),

(Footnote continued on following page)

The plain language of 42 U.S.C. § 602(a)(3) has no bearing upon the decision whether or not a state legislature ought to create county welfare boards, or if such boards are created, what measure of rights, duties and responsibilities they ought to be invested with. In fact, the statute says nothing at all about county welfare boards: it merely grants states, in broad terms, the option to administer AFDC directly or to indirectly supervise the administration of that program. Specific details are implicitly left to the state legislature.

By virtue of N.J.S.A. 44:7-7, the New Jersey Legislature "created" the county welfare boards as "corporate entities." In performing any AFDC function, however, the county welfare board acts as a "bureau" of the State Department of Human Services, Division of Public Welfare, N.J.S.A. 44:7-12. The Department prescribes standards of operating and recordkeeping, and establishes per-

(Footnote continued from preceding page)

reproduced at App. D of the Petition, since the court decided on the basis of New York law that local agencies do have standing to appeal state agency fair hearing decisions. Opposite results based on internal laws of the respective states certainly do not warrant review by the Court.

Moreover, petitioner alleges that the decision below will have a "pervasive" effect on other public assistance programs under the Social Security Act: Title I, Aid to the Aged, 42 U.S.C. § 302(a)(3); Title X, Aid to the Blind, 42 U.S.C. § 1202(a)(3); and Title XIV, Aid to the Permanently and Totally Disabled, 42 U.S.C. § 1352(a)(3). Petitioner's concerns are without foundation, since each of these programs was repealed, effective January 1, 1974, by P.L. 92-603, Title III, § 303(a), (b), 86 Stat. 1484 (1972), and replaced by the federally-administered Supplemental Security Income program, 42 U.S.C. § 1381 *et seq.* Hearings under the new program are held at the federal, not state, level and thus the issue presented *sub judice* can never arise. See 42 U.S.C. § 1383(c).

sonnel standards, including all classification and compensation schedules, for county welfare board employees. N.J.S.A. 44:7-6. The county welfare boards are required to issue AFDC grants only in conformity with state policy, N.J.S.A. 44:7-8, and must pay benefits to a claimant when ordered to do so by the Department after a "fair hearing." N.J.S.A. 44:7-18. These statutes can fairly be characterized as creating at the county level an agency which is charged with performing ministerial functions delegated to it by statute or the Department's regulations. In effect, these state statutes comprise the charter to which the county welfare boards owe their very existence.

It was against the backdrop of this state statutory scheme that the Supreme Court of New Jersey found the county welfare board to be "a subordinate branch of the single state agency" which, "[i]n its capacity as local administrator, . . . exercises a *statutory* function in the overall program . . . [and] has no other interest to assert."* App. A to Petition, p. 6a. (emphasis added). The court thus held that the county welfare board is, in effect, the *alter ego* of the Department of Human Services at the local level by virtue of the state statutory scheme. Since the county welfare board was created by the New Jersey Legislature for this ministerial administrative purpose and no other, its presumed controversy with the parent

* Petitioner ignores the fact that the county welfare board is an agent of the *state*, and not of the *county*, for AFDC purposes. Petition at 7 n.6. The county welfare board was not created by the Legislature to act as a representative of county taxpayers, but to act as a "bureau" of the State Department. N.J.S.A. 44:7-12. Because it cannot serve two masters, but only act as the ministerial agent of the Department, it is precluded from challenging state fair hearing decisions. As the court below pointed out, however, the elected county freeholders may serve as taxpayer representatives to appeal fair hearing decisions when appropriate. App. A. to Petition, p. 7a.

agency over fair hearing decisions is illusory because the board is capable of asserting "no other interest."* This holding is primarily bottomed on state, not federal law, since it is only state law which defines the county welfare board's functions, capabilities and interests.

The state law basis of the court's decision is evident from its citation of state authorities. By its express reference to N.J.S.A. 44:10-2,** the court incorporated by reference the above mentioned comprehensive state statutes which created the county welfare boards and define their functions and duties. App. A to Petition, p. 5a. Also significant is the court's citation of *Redding v. Burlington County Welfare Board*, 65 N. J. 439, 442, 323 A. 2d 477 (1974), which involved a county welfare board's authority to sue AFDC recipients in order to recoup money paid in excess of grant entitlement. At the cited page of *Redding*, the court made clear that it is from the statutory authority of the New Jersey AFDC Act, N.J. S.A. 44:10-1, that a county welfare board derives whatever power it possesses. The *Redding* court found that

* Recognition of the statutory preeminence of the Department over a county welfare board is firmly established in New Jersey, and should have come as no surprise to this petitioner. See *Essex County Welfare Board v. Department of Institutions and Agencies*, 139 N. J. Super. 47, 352 A. 2d 270 (App. Div. 1976); *Essex County Welfare Board v. Department of Institutions and Agencies*, 139 N. J. Super. 191, 353 A. 2d 132 (App. Div. 1976); *Communications Workers v. Union County Welfare Board*, 126 N. J. Super. 517, 315 A. 2d 709 (App. Div. 1974).

** N.J.S.A. 44:10-2 provides that AFDC "shall be administered in accordance with and governed by requirements, conditions, limitations and procedures similar to those established by chapter 7 of Title 44 of the Revised Statutes excepting sections 44:7-3, 44:7-5, 44:7-14 to 44:7-16, inclusive and 44:7-25 of the Revised Statutes."

the power to sue to recoup was "implied in the delegation of authority to administer the program," which authority was of course delegated not by federal law but by state statutes and regulations. 65 N. J. at 445-446, 323 A. 2d at 480. Thus, it is clear that a county welfare board's powers are limited to those powers conferred expressly by statute or delegated by the Department of Human Services.

The court's citation of state AFDC regulations, N.J. A.C. 10:81-1.1 *et seq.*, lends further support to this understanding. The first section of those regulations further explicates the authority of county welfare boards by declaring that the policies of the Department of Human Services are applicable statewide and binding upon all county welfare boards. N.J.A.C. 10:81-1.1(d). Moreover, that section entrusts to the state agency the responsibility for the enforcement and interpretation of all questions of policy on the administrative level.

It is true that 12½% of AFDC grant funds is provided by county taxpayers. N.J.S.A. 44:10-5. These funds are not collected by the county welfare board, which has no taxing powers, but by the elected governing body of the county, the board of chosen freeholders. N.J.S.A. 44:7-24. To protect the county taxpayers' interests in these funds, therefore, the court below declared that the county freeholders could seek review of AFDC fair hearings. Petitioner offers no reason why it, as opposed to the elected freeholders, should be empowered to take such appeals. One reason why petitioner should *not* be empowered to appeal immediately comes to mind, however. The county welfare board defrays 63% of its administrative expenses, such as salaries and costs incurred in filing legal actions including the instant one, with funds it receives from the state. Surely the specter of a subordinate agency spending public funds to challenge the policies of

its superior agency, the one expressly designated by the Legislature to exercise the policy-making role, is a waste of the public's tax dollars and could not have been intended by the New Jersey Legislature.

It must be kept in mind, as properly pointed out at p. 17 of the Petition, that this matter involves the power of a state to "provide for the determination of controversies in [its] courts." *Healy v. Ratta*, 292 U. S. 263, 270 (1934). No federal statute grants aggrieved AFDC applicants or recipients, or county welfare boards, the right to judicial review of fair hearing decisions in state court. In fact, in *Ortwein v. Schwab*, 410 U. S. 656 (1973), the Court held that due process does not require a state to provide appellate review of such decisions in its courts, and could see "no fundamental interest that is gained or lost depending on the availability" of such review. 410 U. S. at 659.

Read in this context, the decision of the Supreme Court of New Jersey is a proper exercise of that court's function, under the State Constitution, of providing the terms by which judicial review may be had of state agency decisions. See *N. J. Const.* (1947), Art. VI, §V, ¶4, and *N. J. Ct. R.* 2:2-3(a)(2) which implements the constitutional provision. Clearly, the court's decision precluding county welfare boards from appealing fair hearing decisions was based on sound state judicial policy:

"To involve the judiciary in the routine review of these grants and the underlying factual determinations would cause delay and uncertainty, preventing those who need help the most from realizing the benefits the program is intended to provide." App. A to Petition, p. 6a.

The court's treatment of the issue in terms of state judicial policy clearly evidences the state law basis of its

decision. If the Supreme Court of New Jersey had concluded that the denial of a county welfare board's standing was compelled as a matter of federal law, there would have been no reason for the court to have addressed such policy considerations involving the "public interest" in the promptness of receipt of welfare benefits and judicial administration. *Id.* at 7a. Although it may be true that the supreme court reached its judgment as to the standing of a county welfare board within the state judicial system based on its perception of the nature of that entity under federal and state statutes, this is a far cry from a result which is dictated by federal law.

Petitioner's arguments that Congress may not "so overtly tamper with administration of a state court system" without violation of the Tenth and Fifth Amendments also effectively underscores the state law basis of the decision below. Petition at 17-19. There is an essential inconsistency between this belated constitutional argument, not asserted in any of the proceedings below, and the rest of the petition. After having spent most of its petition straining to demonstrate that the Supreme Court of New Jersey's decision was based on the dictates of federal law, the county welfare board turns around and argues that such a result violates the Tenth and Fifth Amendments. Even if these constitutional provisions posed the barriers advocated by the petitioner, it should not be presumed that the supreme court's decision rested on such a view of federal law rather than the interpretation of state statutes and state judicial policy. Surely, the Supreme Court of New Jersey is fully conscious of its authority, under the state and federal constitutions, "to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise." *Wolfe v. North Carolina*, 364 U. S. 177, 195 (1960).

Considered as a whole, then, the organization and language of the Supreme Court of New Jersey's decision clearly indicates that state law provides an equal, if not the only, basis for its holding. County welfare boards were created by state statute, and state statutes govern their every action in administering AFDC. No such statute indicates that the Legislature ever intended to permit county welfare boards to appeal state fair hearing decisions. Thus, the court's finding that such boards are subordinate branches of the State Department of Human Services, exercising only statutory functions and capable of asserting no other interests, plainly is based on state law. Moreover, the court's decision was grounded in state judicial policy, which is the sole prerogative of the state supreme court under New Jersey's Constitution. Since the state grounds for the decision below are adequate and independent of federal law, the Court lacks jurisdiction to review this matter and should, therefore, decline to do so.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari to the Supreme Court of New Jersey should be denied.

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